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TITLE 40 STATE ETHICS COMMISSION
Proposed Rule
LSA Document #04-198
DIGEST

Adds 40 IAC 2-1-5.5 concerning ethics education. Amends 40 IAC 2-1-6 concerning acceptable gifts, favors, services, entertainment, food, drink, and honoraria. Amends 40 IAC 2-1-7 concerning appearances, activities, and expenses. *NOTE: LSA Document #04-198, printed at 28 IR 987, was resubmitted for publication.* Effective 30 days after filing with the secretary of state.

40 IAC 2-1-5.5
40 IAC 2-1-6
40 IAC 2-1-7

SECTION 1. 40 IAC 2-1-5.5 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-1-5.5 Ethics education
Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 5.5. Each agency's appointing authority shall do the following:
(1) Require all new employees to participate in ethics training within six (6) weeks of the employee's starting employment date with the agency.
(2) Require all employees to participate in ethics training at least every two years during an employee's tenure with the agency.
(3) Maintain documentation to demonstrate employee compliance with subdivisions (1) and (2).
(*State Ethics Commission; 40 IAC 2-1-5.5*)

SECTION 2. 40 IAC 2-1-6 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria
Authority: IC 4-2-6-3
Affected: IC 3-9-2; IC 4-2-6

Sec. 6. (a) A state employee or **special state appointee**, or the spouse or unemancipated child of a state employee or **special state appointee**, shall not

knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink **from a person who has a business relationship with the employee's agency or is seeking to** influence an action by the employee in his or her official capacity.

The following shall not be subject to this section:

- (1) Gifts, **favours, services, entertainment, food, or drink** from public agencies or **public** institutions.
- (2) Food or drink consumed at a public meeting to which **at least** twenty-five (25) individuals are invited. A meeting will be considered public if:
 - (A) the event is a reception or other gathering for public officials **that is not arranged to solicit government procurement of goods or services;**
 - (B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or
 - (C) the meeting has a formal **educational** program that the employee is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value.
- (4) Food or drink consumed by an employee during negotiations or other activities related to an **Indiana economic development corporation** economic development project.
- (5) **Gifts, favours, services, entertainment, food, or drinks from relatives,** so long as:
 - (A) **the gifts or other items of value** are not deducted as a business expense and
 - (B) **the gift giver is not seeking to influence an action by an employee in his or her official capacity.**

In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.
- (6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
- (7) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.
- (8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.
- (b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:
 - (1) The employee.
 - (2) The nature and value of the gift.
 - (3) The donor of the gift.
 - (4) Why acceptance of the gift is in the public interest.

Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;
- (4) entertainment;
- (5) food; or
- (6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

(d) An employee shall not personally accept an honorarium for himself or herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. A state employee may personally accept an honorarium or fee for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case can a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law. (*State Ethics Commission; 40 IAC 2-1-6; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.: 15 IR 201; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227*)

SECTION 3. 40 IAC 2-1-7 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-1-7 Appearances; activities; expenses

Authority: IC 4-2-6-3

Affected: IC 4-2-6

Sec. 7. (a) A state officer or employee shall not solicit, accept, or receive payment for travel expenses, including, but not limited to, any lodging, transportation, or registration fees, for attending events concerning state business from a person who has a business relationship with the

employee's agency or is seeking to influence an action by an employee in his or her official capacity.

(b) An employee's appointing authority or state officer may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

- (1) The employee.**
- (2) The setting of the event.**
- (3) The amount and payer of the expenses.**
- (4) Why payment of the expenses is in the public interest.**

The written waiver shall be filed with the commission the earlier of within thirty (30) days of the event or receipt of the expenses. The commission may review the written waivers. A state officer or appointing authority may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not pay the employee's travel expenses, including, but not limited to, any lodging, transportation, or registration fees, if the employee would not be permitted to accept the payment under subsection (a) or (b).

(d) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer or employee or their official representatives on behalf of the state, the person is requested to remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund. (State Ethics Commission; 40 IAC 2-1-7; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.: 15 IR 202; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227)